United States Court of Appeals

for the Second Circuit

AMICUS BRIEF

74-1960

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STAMICARBON, N.V.,

Appellant,

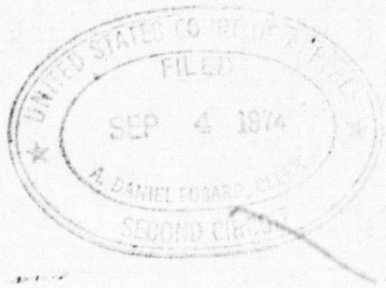
v.

AMERICAN CYANAMID COMPANY,

Appellee.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE



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I N D E X

AUTHORITIES

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No. 74-1960

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STATEMENT OF THE ISSUES PRESENTED

1. Whether the provision in the Stamicarbon-American Cyanamid licensing agreement which binds the licensee to use its "reasonably best efforts" to prevent disclosure of a secret process constitutes

a waiver of the licensee's right to a public criminal trial.

2. Whether the district court in a criminal contempt proceeding has the power, consistent with the Sixth Amendment, over the defendant's objection to hold portions of the proceedings in camera so as to prevent the public disclosure of trade secrets.

INTEREST OF THE UNITED STATES

This appeal has its roots in a criminal contempt proceeding brought by the United States against American Cyanamid Company ("Cyanamid") for alleged violation of an antitrust judgment. On the eve of the trial of that action, Stamicarbon, N.V. ("Stamicarbon") sought an injunction requiring Cyanamid to consent to the conduct in camera of portions of the contempt proceedings. Stamicarbon alleged that it had licensed valuable, secret know-how to Cyanamid, that Cyanamid had promised not to disclose the know-how, and that only an injunction to compel Cyanamid to consent to such in camera proceedings could protect Stamicarbon against the irreparable injury which would result from public disclosure of the trade secrets at the contempt trial. The district court denied the injunction, and Stamicarbon has appealed.

The United States has a strong interest in this case, because it is the prosecutor in the underlying contempt case. Stamicarbon, by seeking to place constraints on Cyanamid in that case, raises

sensitive constitutional questions that may not only affect Cyanamid in its trial conduct, but may also affect both the presentation and the outcome of the government's prosecution.

STATEMENT

On March 19, 1974, the United States began criminal contempt proceedings against American Cyanamid Company, charging it with violating an antitrust consent judgment entered in 1964 (S.J.A. 20s-24s). 1/ That judgment had concluded a suit in which the United States accused Cyanamid, inter alia, of violating Sections 1 and 2 of the Sherman Act (15 U.S.C. 1, 2) by restraining, attempting to monopolize and monopolizing the interstate and foreign trade in melamine. United States v. American Cyanamid Company, S.D.N.Y., Civ. No. 60 Civil 3857. 2/ The judgment prohibited Cyanamid from producing in any year more than thirty million pounds of melamine "until melamine production capacity in the United States (other than melamine producing capacity of any co-conspirator and of Cyanamid) shall be increased by a total of more than twenty-five (25) million pounds per year over the total of such capacity

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1/ "S.J.A." refers to the "Supplement To Joint Appendix", filed by appellant.

2/ The complaint also accused Cyanamid of similar violations with regard to melamine-related products, and with violating Section 7 of the Clayton Act (15 U.S.C. 18) by acquiring Formica Company, a leading user of melamine laminating resins.

at the date of disposition [of Cyanamid's Willow Island melamine plant] . . ." (S.J.A. 6s). 3/ The government's contempt petition charged that Cyanamid, knowing that domestic production capacity (excluding that of Cyanamid and the co-conspirators) had not increased twenty-five million pounds since November 1, 1964, had nonetheless manufactured more than thirty million pounds of melamine in 1972, and thus had knowingly and willfully violated Section V(A)(2) of the judgment (S.J.A. 22s-24s). Cyanamid denied liability and pleaded not guilty (S.J.A. 27s-30s).

Since Cyanamid admits that its 1972 melamine production exceeded thirty million pounds (S.J.A. 29s), the central issue in the contempt proceeding is whether the capacity of the rest of the melamine industry had increased more than twenty-five million

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3/ Section V(A) of the judgment provides:

> From the date of entry of this Final Judgment and for a period of ten (10) years from the date of disposition of Willow Island, or until melamine production capacity in the United States (other than melamine producing capacity of an co-conspirator and of Cyanamid) shall be increased by a total of more than twenty-five (25) million pounds per year over the total of such capacity at the date of disposition, but in no event for a period of less than five (5) years, Cyanamid is enjoined and restrained from:
>
> * * *
>
> (2) Producing in the United States in any calendar year from said date of disposition of Willow Island more than thirty (30) million pounds of melamine. In computing such production in any year, the amount of Cyanamid's melamine imports in the preceding calendar year of melamine made by Cyanamid outside the United States shall be deemed to be part of Cyanamid's production.

Cyanamid disposed of the Willow Island facilities on November 1, 1964.

pounds over 1964 capacity. 4/ The government intends to call as witnesses officers of the three other producers of melamine, 5/ and to ask them to explain the measurement of capacity and to estimate their companies' 1972 capacity. In addition, the government will call an expert witness who has studied each plant to give his estimate of capacity. American Cyanamid presumably intends to present its own expert witnesses who will testify to capacity measurement and appraise the 1972 capacity of the competitors' plants.

The trial was originally scheduled to begin on July 15, 1974, before Judge Brieant. On July 11, 1974, Melamine Chemicals, Inc. ("MCI") filed a motion in the contempt proceeding to require that the testimony of its personnel be held in camera. MCI asserted that such in camera proceedings were necessary in order to avoid disclosure of secret processes for the production of melamine which MCI was obligated to keep secret under a license agreement with Stamicarbon. During informal discussions government counsel stated that the government would not object to such a procedure; counsel for Cyanamid stated that Cyanamid would not consent to such a procedure and would not waive its right to a public trial under the Sixth Amendment. (J.A. 9a-10a)

4/ 1964 capacity was eighty-three million pounds. Thus, Cyanamid's 1972 production was lawful so long as the rest of the industry had a capacity greater than one hundred eight million pounds.

5/ The three other American companies which produce melamine are: Allied Chemical Company, Melamine Chemicals, Inc., and Premier Petrochemical.

On the following day Stamicarbon filed a separate civil suit against Cyanamid seeking to enjoin Cyanamid from refusing to consent to holding in camera those portions of the contempt trial in which Stamicarbon's secrets might be revealed. (J.A. 2a-7a). Stamicarbon claimed that Cyanamid was required to consent to such a procedure under the terms of the Stamicarbon-Cyanamid licensing agreement, which requires Cyanamid to "use its reasonably best efforts" to prevent disclosure of the secret process to third parties. (J.A. 5a). Stamicarbon also claimed that such a breach of the license agreement by Cyanamid would cause irreparable injury. (J.A. 4a-5a). Cyanamid responded that an order compelling it to consent to in camera proceedings would deprive it of its right to a public trial and moved to dismiss the complaint for failure to state a claim. (J.A. 43a, 31a).

At the hearing on Stamicarbon's request for a preliminary injunction, Judge Brient expressed doubt that it would be necessary to reveal any genuine trade secrets in order to resolve the question of capacity. (J.A. 43a). He stated that he planned to permit Stamicarbon's attorney to object to the public disclosure of evidence revealing Stamicarbon's trade secret at the contempt trial and would determine the relevancy of the evidence at that time. (J.A. 42a). Government counsel advised the court that the United

States objects to the participation of third parties in the criminal contempt proceeding. (J.A. 37) 6/

Since the court found it impossible to determine in advance the relevance of evidence revealing trade secrets, the court issued an oral opinion with respect to Stamicarbon's request for a preliminary objection. The court declined to determine whether Stamicarbon's complaint states a breach of contract claim. (J.A. 41a, 45a) However, the court did find that disclosure of the trade secrets would cause irreparable injury to Stamicarbon. (J.A. 45a) Nevertheless, the court, noting that Cyanamid "declines to waive its right to a public trial" (J.A. 43a), denied the preliminary injunction request because it was "without power to deprive the defendant of a public trial" even if the secret processes might be revealed as a result of Cyanamid's refusal to consent to in camera proceedings. (J.A. 44a)

The district court stayed the contempt trial for two days in order to permit Stamicarbon to appeal to this Court. On July 17, 1974, Stamicarbon appealed to this Court from the order denying a

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6/ The government did not formally intervene in the injunction proceeding and did not take any position at that time on the merits of Stamicarbon's claim for injunctive relief. The question of the propriety of permitting Stamicarbon's counsel to participate in the criminal contempt trial is not directly presented by this appeal.

preliminary injunction, pursuant to 28 U.S.C. 1292(a). On the same day this Court stayed the criminal contempt proceedings and directed that the appeal be expedited.

ARGUMENT

I. CYANAMID'S DISCLOSURE AT TRIAL OF STAMICARBON'S TRADE SECRETS WOULD NOT BE A BREACH OF THE LICENSING AGREEMENT

Stamicarbon's suit is founded on the threat of an alleged breach by Cyanamid of the non-disclosure provision of the Stamicarbon-Cyanamid licensing agreement. (J.A. 4a-5a) Its main contention on appeal (App. Br., 15-26) - and the only contention presented in the district court - is that Cyanamid's refusal to waive its public trial rights is a breach of the contract provision which requires that Cyanamid: "shall treat all STAMICARBON Know-How furnished to CLIENT under this agreement as strictly confidential and shall use its reasonably best efforts to prevent disclosure to third parties" (J.A. 6a).

Cyanamid claims that this provision does not require it to consent to <u>in camera</u> proceedings in a criminal case, and it moved to dismiss the complaint for failure to state a claim, but the district court specifically declined to decide the question. (J.A. 41a)

We believe that under New Jersey law, which governs 7/, the contract does not apply to such matters, and thus that Stamicarbon's complaint should be ordered dismissed. 8/

It is clear that the licensing agreement does not on its face contain a waiver by Cyanamid of its constitutional right to a public criminal trial. Indeed, the word "waiver" does not appear

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7/ Article XII of the licensing agreement provides that: "This Agreement is made in contemplation of and shall be construed in accordance with the law of the State of New Jersey." Since Stamicarbon's suit rests on diversity jurisdiction, a federal court sitting in New York must follow New York's choice of law. Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941). A New York court would honor the parties' contractual agreement to have New Jersey law govern interpretation of the contract, especially since neither of these large corporate parties is a citizen of New York. See Co. Inversiones Internacionales v. Indus. M. Bank, 269 N.Y. 22, 26, 198 N.E. 617, 618 (1935); A. S. Rampell, Inc. v. Hyster Co., 3 N.Y. 2d 369, 381, 144 N.E. 2d 371, 379 (1957).

8/ Although the district court did not rule on the question, we believe that it is proper for this Court to decide it now. The issue is strictly one of law which this Court is as competent to decide as the district court.

in the non-disclosure provision, and it does not mention legal proceedings, criminal or civil. Similarly, it is clear that the licensing agreement does not by general language impose on Cyanamid an absolute duty of non-disclosure. To the contrary, it requires of Cyanamid only that it "use its reasonably best efforts to prevent disclosure thereof to third parties" (J.A. 6a). Stamicarbon's case, then, comes down to the assertion that Cyanamid's promise to "use its reasonably best efforts to prevent disclosure" is an implied promise to waive its right to a public trial in any criminal proceeding in which exercise of that right might lead to disclosure of trade secrets (App. Br., 19-23). Although the precise issue appears not to have arisen in New Jersey, that state's strong policy of respect for the right to public trial would almost surely bar the interpretation of the contract which Stamicarbon urges.

In New Jersey, the right of public trial is secured not only by the United States Constitution, but also by the New Jersey Constitution. Article I, ¶10 of the New Jersey Constitution provides: "In all criminal prosecutions the accused shall have the right to a speedy and public trial . . . ." This right is founded

on a deep distrust of secrecy in criminal trials. Ex Parte Graham, 13 N.J. Super. 449, 4[illegible], 80 A. 2d 641, 643 (App. Div., 1951) (Brennan, J.), certification denied, 7 N.J. 582 (1951), certiorari denied, 342 U.S. 930 (1952). And it is carefully protected. Under New Jersey law, it is unconstitutional even to exclude the defendant's friends from the courtroom, let alone to to hold portions of the trial in secret. State v. Haskins, 38 N.J. Super. 250, 254, 118 A. 2d 707, 710 (App. Div., 1955); and see State v. Laws, 50 N.J. 159, 176, 233 A. 2d 633, 642 (1967), certiorari denied, 393 U.S. 971 (1968). 9/

Although a defendant may waive his right to a public trial, the "courts 'indulge every reasonable presumption against waiver of constitutional rights'". State v. Koch, 118 N.J. Super. 421, 426, 288 A. 2d 295, 298 (App. Div., 1972). Thus, in a criminal prosecution, a waiver of public trial must be clear, intelligent, and knowing. "Inattention does not constitute a waiver." State v. Haskins, supra, at 257, 710.

These strict standards governing the waiver of the right to public trial made during a criminal prosecution necessarily inform the inquiry into whether a private contract, long antedating any

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9/ The right to a public trial applies in criminal contempt proceedings. Cf. N.J. Dept. of Health v. Roselle, 34 N.J. 331, 338-339, 169 A. 2d 153, 157 (1961).

any criminal proceedings, constitutes a prospective waiver of constitutional rights in some future criminal proceeding. In New Jersey parties may contract to share trade secrets, but in New Jersey, as elsewhere, a contract which is contrary to public policy is void. "The sources determinative of public policy are, among others, our federal and state constitutions . . . ." Allen v. Commercial Casualty Insurance Co., 131 N.J.L. 475, 478, 37 A. 2d, 37, 39 (1944). As pointed out, the guarantees of a public trial in both the state and federal constitutions are strong. Thus it is a serious question whether even an express waiver by Cyanamid of this right would be valid and binding. Cf. State v. Clark, 58 N.J. 72, 275 A. 2d 137 (1972); Corbin On Contracts (1963), §1515.10/

10/ Cf. New Jersey Rule of Evidence 32 (N.J.S.A. 2A: 84A-26) which disallows trade secret privilege whenever it would "work injustice."

Stamicarbon's reliance (App. Br., 21-22) upon Marchetti v. United States, 466 F. 2d 1309 (C.A. 4, 1972), certiorari denied, 409 U.S. 1063 (1972), is ill-advised. In Marchetti the court upheld the issuance of an injunction to prevent an ex-CIA employee from disclosing classified information concerning national defense and foreign affairs in breach of a secrecy agreement in the contract under which the CIA had hired him. The case does not deal with a person's right to disclose information as part of his defense in a criminal trial. Moreover, contrary to appellant's contention, the case does not establish the supremacy of contractual secrecy clauses over First Amendment guarantees, but holds only that the government may lawfully require such secrecy as a condition of employment when the employment is "concerned with secret information touching upon the national defense and the conduct of foreign affairs . . . ." Id. at 1313.

However, since the present contract lacks such an express waiver and contains only a general pledge of "reasonably best efforts", New Jersey courts would construe it in such a way as to preserve valuable constitutional rights and avoid a reading which would seriously threaten invalidity. Cf. Silverstein v. Keane, 19 N.J. 1, 11, 115 A. 2d 1, 6 (1955).

II. THE PROTECTION OF TRADE SECRETS IS NOT SUFFICIENT REASON TO DENY CYANAMID ITS CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL

Stamicarbon contends that, even if the licensing agreement did not oblige Cyanamid to consent to in camera proceedings, the protection of its trade secrets is an interest sufficiently important to justify restricting Cyanamid's right to a public trial (App. Br., 26-34). 11/ This argument is unsound because it understates the importance of the Sixth Amendment and overstates the significance of trade secrets.

11/ Stamicarbon apparently does not dispute the district court's holding that the Sixth Amendment's guarantee of a public trial applies to criminal contempt proceedings to punish violation of a court judgment. Although it was once held in a case arising out of contempt of a grand jury that "[p]rocedural safeguards for criminal contempts do not derive from the Sixth Amendment" (Levine v. United States, 362 U.S. 610, 616 (1960) but rather from the Fifth Amendment's guarantee of "due process", the Supreme Court subsequently has made it clear that due process encompasses the Sixth Amendment's right to a public trial in contempt proceedings, at least in a case like the present. Bloom v. Illinois, 391 U.S. 194, 205 (1968); Frank v. United States, 395 U.S. 147, 148 (1968); Mayberry v. Pennsylvania, 400 U.S. 455, 466 (1971).

Similarly, there is no dispute that the right to a public trial belongs to corporations as well as to natural persons. Cf. United States v. R. L. Polk and Company, 438 F. 2d 377, 379 (C.A. 6, 1971).

The Sixth Amendment's guarantee of a public trial is a reflection of the Founding Fathers' fear that secret, or in camera, criminal trials contained grave possibilities for the abuse of liberty. In Re Oliver, 333 U.S. 257, 266-268 (1948). The framers of the Sixth Amendment believed that openness of public trials was a sound preventive of such abuse, for openness makes any injustice subject to public scrutiny and criticism. Thus, a public trial "has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution." Id. at 270. And the right of public trial not only protects the accused, but also serves the broad public good that "[t]he spectators learn about their government and acquire confidence in their judicial remedies." Id. at 270, n. 24; United States v. Clark, 475 F. 2d 240 (C.A. 2, 1973); United States v. Lopez, 328 F. Supp. 1077 (E.D.N.Y., 1971). Accordingly, it is settled law that it is unconstitutional to conduct an entire trial in camera. In Re Oliver, supra.

Although the right to a public trial is not absolute, it is so important that it prevents a court from holding portions of a criminal trial in secret except when such secrecy is essential to protect an important public interest against serious harm which

publicity might inflict. United States v. Bell, 464 F. 2d 667 (C.A. 2, 1972), certiorari denied, 409 U.S. 991 (1972); United States v. Clark, 475 F. 2d 240 (C.A. 2, 1973). Thus, this Court has held that the public's interest in preventing air piracy is so great that testimony describing the government's "skyjacker profile", an important part of the program to prevent skyjacking, may be taken in secret so that the profile would not be rendered useless by becoming public knowledge. Bell, supra, at 670. However, this Court also emphasized that in camera proceedings are permissible only for the "'protection of the air traveling public' or other compelling reasons" and that, consistent with the Sixth Amendment, those aspects of the trial not dealing with the skyjacker profile must be public. Clark, supra, at 246.

The protection of trade secrets against disclosure is simply not important enough to justify trenching on the constitutional right to a public trial. Stamicarbon claims for trade secrets a testimonial privilege that would prohibit their disclosure in criminal trials, except in camera (App. Br., 28-29). But testimonial privileges are exceptions to the general rule that "'the public . . has a right to every man's evidence.'" United States v. Nixon, ___U.S. _____, ____, 42 U.S.L.W. 5237, 5245 (1974). And as the

Supreme Court stated, "these exceptions to the demands for every man's evidence are not lightly created nor expansively construed . . . ." Id. at ____, 5245.

Stamicarbon does not contend that this trade secret privilege is constitutionally based, nor that a statute confers it; it cites no cases in which such a privilege has been mentioned, let alone in which the privilege was recognized as cutting back the scope of the constitutional right to a public trial (App. Br., 26-34). Rather, it places its principal reliance (App. Br., 27-28, 32-33) upon Rule 508 of the Proposed Rules of Evidence, which would have recognized a limited trade secrets privilege. 12/ This reliance is misplaced. Congress prohibited the Proposed Rules of Evidence from taking effect. Public Law 93-12, 87 Stat. 9 (1973). And

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12/ Proposed Rule 508 provides: "A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance of justice may require."

even if they had taken effect, Rule 508 would not have authorized restricting the Sixth Amendment, for the privilege would be allowed only "if the allowance of the privilege will not . . . work injustice." Limitation of an accused's constitutional right to a public trial plainly would "work injustice." 13/

The inability of trade secret protection to abridge the right to public trial is further shown by the limited nature of trade secrets. The disclosure of trade secrets, of course, involves no threat to life or personal safety, as did the disclosure of the skyjacker profile. Rather, what is involved is a form of intellectual property, grounded in notions of confidentiality and fair business dealing. Trade secret law is the creation of the states, rather than of the federal government, although federal courts will in diversity cases apply state law protecting trade secrets. Kewanee Oil Company v. Bicron Corporation, ____ U.S. ____, 94 S. Ct. 1879 (1974); Painton & Company v. Bourns, 442 F. 2d 216 (C.A. 2, 1971).

13/ Although the Advisory Committee's Note to Rule 508 cites several cases which recognized "a qualified right to protection against disclosure of trade secrets," none of the cases are criminal cases. See Moore's Federal Practice, Proposed Rules of Evidence (Temporary Pamphlet, 1973), pp. 70-71.

The holders of trade secrets, like Stamicarbon, may license those secrets to firms like Cyanamid. However, as this Court has observed, a trade secret license "binds no one except the licensee." Painton & Company, supra, at 223. The rest of the world is "free, as the licensee previously was, to attempt by fair means to figure out what the secret is, and if they succeed, to practice it." Id. at 223. Thus both the office of trade secret protection and its importance are distinctly limited.

Furthermore, the refusal to make the Sixth Amendment yield to trade secrets will almost surely have no detrimental effect on the commercial viability of trade secrets. The number of criminal prosecutions in which trade secrets arise is small; the number in which there is a serious risk of disclosure is smaller yet. The parties to a licensing agreement can, by adjusting royalty provisions, take into effect whatever minimally increased risk of disclosure full compliance with the Sixth Amendment entails. Cf. Kewanee Oil Company v. Bicron Corporation, supra.

III. THE DISTRICT COURT'S FINDING THAT CYANAMID IN THE CONTEMPT PROCEEDINGS DID NOT WAIVE ITS RIGHT TO A PUBLIC TRIAL RENDERS UNSOUND STAMICARBON'S OTHER ARGUMENTS

The district court found that, whatever the meaning of the confidentiality clause in the 1969 licensing agreement, Cyanamid

in the contempt proceedings "declines to waive its right to a public trial" (J.A. 43). And thus it held that Cyanamid was still assured of this right (J.A. 44). As we have pointed out (see pp. 8-13, supra), the licensing agreement should not be read as constituting a prospective waiver of an important constitutional guarantee. However, even if it was such a waiver, the district court was correct in holding, contrary to Stamicarbon's argument (App. Br., 24-25), that the waiver was ineffectual to bind Cyanamid here. In view of the importance of the right to public trial (see pp. 13-15, supra), the current, clear assertion of that right in proceedings where it is meaningful should take precedence over a waiver made years earlier in a commercial contract not part of the criminal process. 14/

Similarly, the district court's finding of non-waiver gravely undermines Stamicarbon's contention (App. Br., 34) that Cyanamid's

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14/ Thus, Stamicarbon's analogy of the licensing agreement to a plea bargain (App. Br., 25) misses the mark, for a plea bargain, an agreement made between the prosecution and the accused in which the accused waives rights, is in the main stream of the criminal proceedings to which the rights surrendered apply.

This, of course, is not to say that Cyanamid could not in the contempt proceedings have waived its right to a public trial - as it waived its right to a jury trial (S.J.A. 34s) - but only that it did not do so.

consent two months earlier to an order for secrecy concerning certain documents (S.J.A. 32s) was a blanket waiver of its right to a public trial. 15/

15/ The order of May 8, 1974 (S.J.A. 32s-33s) governed Cyanamid's use of a report and supporting documents on melamine production capacity by J. Lisle Reed, one of the government's proposed witnesses. The order provided that: "If said report, documents or information contained therein are used in conjunction with the trial of this case, they shall be utilized in a manner which will maintain the confidentiality of the sensitive commercial or proprietary information contained therein, subject to further order by the Court" (S.J.A. 32s-33s). Stamicarbon argues that this consent order contemplated in camera proceedings and thus was a waiver of Cyanamid's right to present in public any Stamicarbon trade secrets which possibly were contained in the material. (App. Br., 35-36). This argument, whatever its merits otherwise, overlooks the clause in the order which makes Cyanamid's obligations "subject to further order by the Court" (S.J.A. 33s). The Court's order and opinion of July 15, 1974, in which the Court found that Cyanamid declined to waive its right to a public trial, would appear to be just such a "further order."

CONCLUSION

For the foregoing reasons, Stamicarbon's complaint should be ordered dismissed for failure to state a claim, and the district court's order should be affirmed.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I, Robert B. Nicholson, hereby certify that today, September 3, 1974, I caused to be served by air mail special delivery the accompanying BRIEF FOR THE UNITED STATES AS AMICUS CURIAE upon the following persons:

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